

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

☞ **Appendix Q** ... has been added to the **2017 LRB-6071**

Appendix A ☞ LRB 17-5979

Appendix B ☞ LRB 17-5982

Appendix C ☞ LRB 17-5983

Appendix D ☞ LRB 17-5986

Appendix E ☞ LRB 17-5989

Appendix F ☞ LRB 17-5995

Appendix G ☞ LRB 17-5998

Appendix H ☞ LRB 17-6006

Appendix I ☞ LRB 17-6007

Appendix J ☞ LRB 17-6012

Appendix K ☞ LRB 17-6021

Appendix L ☞ LRB 17-6023

Appendix M ☞ LRB 17-6024

Appendix N ☞ LRB 17-6027

Appendix O ☞ LRB 17-6028

Appendix P ☞ LRB 17-6031

Appendix Q ☞ LRB 17-6036

Appendix R ☞ LRB 17-6037

Appendix S ☞ LRB 17-6038

Appendix T ☞ LRB 17-6046

Appendix U ☞ LRB 17-6047

Appendix V ☞ LRB 17-6048

Appendix W ☞ LRB 17-6049

Appendix X ☞ LRB 17-6050

Appendix Y ☞ LRB 17-6052

Appendix Z ☞ LRB 17-6059

Appendix AA ☞ LRB 17-6065

Appendix BB ☞ LRB 17-6067

2017 DRAFTING REQUEST

Bill

For: **Robin Vos (608) 266-9171**

Drafter: **ewheeler**

By: **Steve**

Secondary Drafters:

Date: **11/19/2018**

May Contact:

Same as LRB:

Submit via email: **YES**

Requester's email: **Rep.Vos@legis.wisconsin.gov**

Carbon copy (CC) to: **Elizabeth.Wheeler@legis.wisconsin.gov**
michael.duchek@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Rule-making authority and federal compliance plans

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 11/21/2018	anienaja 11/21/2018			
/P1			lparisi 11/21/2018		

FE Sent For:

<END>

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

11/14/18 - Meeting w/ Steve and Alicia in Vos office
- No rulemaking authority from fed. compliance plan

Wheeler, Elizabeth

From: Duchek, Michael
Sent: Friday, November 16, 2018 11:18 AM
To: Wheeler, Elizabeth
Subject: FW: model language
Attachments: 201811161024.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

See attached.

From: Fawcett, Steve
Sent: Friday, November 16, 2018 10:50 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: model language

Pg 1-2 is language on standing for associations
Pg 3 is on fed compliance plans

1 **227.119 Federal Compliance Plans.** (1) No agency may submit a plan to a federal agency or a
2 subunit of the federal government for the purpose of complying with a requirement under federal law
3 unless the following conditions are met:

4 (a) If the plan would impose a legal requirement, create a regulatory requirement, or contains
5 any element that constitutes a rule as defined in s. 227.01(13), the plan may not be submitted to the
6 federal government until it has been promulgated as a rule, and has complied with all provisions of this
7 chapter that apply to the rulemaking process, including legislative review.

8 (b) If the plan does not meet any of the criteria set forth in par. (a), the plan may not be
9 submitted to the federal government until, subject to par. (d), 60 days after it been submitted for review
10 to the Joint Committee for Review of Administrative Rules, and a standing committee in each house of
11 the legislature having policy jurisdiction over the subject matter contained in the plan.

12 (c) If the Joint Committee for Review of Administrative Rules or a standing committee that
13 receives a plan under par. (b) finds that the plan would impose a legal requirement, would impose a
14 regulatory requirement, would constitute a rule, or contains elements that exceed the agency's
15 statutory authority, the joint committee or standing committee may object to the plan by majority vote.
16 The Joint Committee for Review of Administrative Rules shall be immediately notified of an objection
17 under this section from a standing committee.

18 (d) If there is an objection under par. (c), the agency may not submit the plan to the federal
19 government until it has first been promulgated as a rule, and has complied with all provisions in this
20 chapter that apply to the rulemaking process, including legislative review.

21 (e) An agency may modify a plan receiving an objection under par. (c) to remove provisions that
22 would impose a legal requirement, would impose a regulatory requirement, would constitute a rule, or
23 contains elements that exceed the agency's statutory authority and resubmit the revised plan for
24 legislative review under par. (b).

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



11/20/2018

Per discussion with Steve:

- Do not use language sent on 11/16.
- instead, make clear that an agency cannot rely on compliance plan for rulemaking authority.
- go with what was discussed with MED on 11/14.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6036? PI
EAW:... am

TODAY 11/21 H

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
xref
Pwf

1

Gen

plan submitted by an agency to the federal government for the purpose of complying with federal law (compliance plan)

AN ACT ...; relating to: rulemaking authority for federal compliance plans.

Analysis by the Legislative Reference Bureau

This bill provides that a ~~compliance plan~~ does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. The bill provides that no agency may agree to promulgate a rule as a component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted to the federal government.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 227.11 (title) of the statutes is amended to read:

3 227.11 (title) ~~Extent to which chapter confers~~ Agency rule-making
4 authority.

5 SECTION 2. 227.11 (3) of the statutes is created to read:

6 ~~227.11 (3)~~ A plan that is submitted to the federal government for the purpose
7 of complying with a requirement of federal law does not confer rule-making
8 authority and cannot be used by an agency as authority to promulgate rules. No

1 agency may agree to promulgate a rule as a component of a compliance plan unless
2 the agency has explicit statutory authority to promulgate the rule at the time the
3 compliance plan is submitted.

4 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6036/P1

EAW:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 227.11 (title); and *to create* 227.11 (3) of the statutes; **relating**
2 **to:** rule-making authority for federal compliance plans.

Analysis by the Legislative Reference Bureau

This bill provides that a plan submitted by an agency to the federal government for the purpose of complying with federal law (compliance plan) does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. The bill provides that no agency may agree to promulgate a rule as a component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted to the federal government.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 227.11 (title) of the statutes is amended to read:
4 **227.11** (title) ~~Extent to which chapter confers~~ **Agency** rule-making
5 **authority.**
6 **SECTION 2.** 227.11 (3) of the statutes is created to read:

1 227.11 (3) A plan that is submitted to the federal government for the purpose
2 of complying with a requirement of federal law does not confer rule-making
3 authority and cannot be used by an agency as authority to promulgate rules. No
4 agency may agree to promulgate a rule as a component of a compliance plan unless
5 the agency has explicit statutory authority to promulgate the rule at the time the
6 compliance plan is submitted.

7 (END)